IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5623 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VADODARA JILLA SARVODAYA SEVA MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5623 of 2004

MS MAMTA R VYAS for Petitioner No. 1

MR DIPEN DESAI, LD.AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 06/05/2004

ORAL JUDGEMENT

1. Rule. Mr.Dipen Desai, learned AGP waives service of rule on behalf of respondents. However, he has stated that he has not received any instruction in this behalf. Looking to the fact that this being an education matter, I have taken up for hearing today.

2. The petitioner has filed this petition

challenging the order dated 31st March, 2004, passed by the Additional Secretary, Education Department, State of Gujarat by which the authority has rejected the application of applicant to start the institute of Government Basic Training College.

3. The facts giving rise to this petition are as under:-

3.1 The petitioner is a trust registered under the Bombay Public Trusts Act, 1950 bearing Registration No.E-2592/Vadodara dated 16.8.1978.

3.2 The petitioner has been running many educational institutions including an Ashramshala at Khatamba, Tal.Vadodara which is a tribal area and thus the applicant trust is giving the benefits of education at all levels to the tribal people of Khatamba and surrounding areas.

3.3 The petitioner had requested for approval on 11.11.2003 to start a new D.B.Ed. (G.B.T.C.) College at Khatamba, District Vadodara with effect from June 2004 along with all the necessary documents showing the facilities for accommodation, financial stability of the trust and other necessary documents.

3.4 The State of Gujarat - respondent No.1 had asked certain clarifications from the petitioner on 28.12.2003 from the petitioner. The petitioner trust submitted an exhaustive reply to all the queries on 4.12.2003 though the said queries were already clarified in the documents annexed along with the application. The petitioner further requested the authorities to refer to the documents and grant the approval at the earliest. The petitioner further mentioned in the said letter that there was no such institution imparting such education in the surrounding area of 100 kms. and therefore there is an inevitable necessity to start such an institution for the benefit of the tribal people.

3.5 The petitioner had requested on 30.7.2002 for approval to start a college in the year 2002 from the National Council for Teachers' Education (NCTE), Bhopal who informed the petitioner that the petitioner should obtain "No Objection Certificate" from the State Government and till then the application of the petitioner cannot be granted.

3.6 Though the petitioner is complying with all the necessary requirements and is having sufficient

infrastructure like huge building, financial stability, etc. the respondent No.1 on 16.1.2004 without application of mind and without verifying the record, rejected the application of the petitioner for grant of NOC without assigning any reason.

3.7 Being aggrieved and dissatisfied with the said order, the petitioner trust filed a petition before this Court being SCA No.2260/2004. This Court issued notice and thereafter after hearing all the parties, by an order dated 9.3.2004 directed the respondents to hear afresh and pass necessary orders on or before 31st March, 2004.

3.8 Thereafter the petitioner also filed a note for speaking to minutes and the same was disposed of on 13th April, 2004.

3.9 The petitioner further submitted that pursuant to the order dated 9.3.2004, the petitioner by a letter dated 18.3.2004 made a detailed representation along with all the documentary evidence which were submitted earlier. The hearing of the aforesaid application was held and concluded on 26.3.2004. Till 6.4.2004 the petitioner did not hear by the authorities and thereafter the petitioner made a request to declare the decision immediately. The respondent No.1 thereafter by order dated 31.3.2004 rejected the application of the petitioner on 8.4.2004 which was received by the petitioner only on 10.4.2004.

3.10 Being aggrieved and dissatisfied with the said order, the present petition has been filed before this Court challenging the said order in this behalf.

4. Ms.Mamta Vyas, learned advocate appeared on behalf of the petitioner and Mr.Dipen Desai, learned AGP appeared on behalf of respondents State but he stated that he has no instructions in this behalf. Looking to the urgency of the matter, the matter is taken up for hearing today.

5. I have gone through the order of the authority in this behalf. The first reason given by the authority stating that petitioner has constructed building but the said building is for other education institutions and this building is not borne out from the record of the case. It may be noted that Ms.Mamta Vyas, learned advocate for the petitioner has shown me the photographs and stated that this buildings are pertaining to the course of Government Basic Training College and the buildings are used for this very course.

6. It may be noted that the school is going to start in the tribal area and in 100 kms. there is no other school. However the authority has admitted the fact that the school is in tribal area but merely stated that in the tribal area that it is situated that does not mean that other people cannot take advantage of the school. It may be noted that the aforesaid reasons given by the authority is also absolutely irrelevant. The fact that the school in tribal area and about 100 kms. there is no other school itself shows that surrounding area of tribal area is likely to take advantage of the school. Merely it is in the tribal area that is not the reason for rejecting the application of the petitioner.

7. The third reason is that the petitioner has no adequate experience in this behalf. Ms.Mamta Vyas, learned advocate for the petitioner has stated that petitioner institute is running since 1978 and there are also running other school which has not been properly considered by the authority and therefore the third reason is also not correct.

8. The fourth reason that the authority has stated that institute must be a deposits of Rs.6.00 lakhs of rupees, and originally Rs.3.00 lakhs but at the time of hearing deposits Rs.5.74 lakhs and it is less than than Rs.6.00 lakhs but the same should not be considered.

9. It may be noted that the learned advocate for the petitioner has invited my attention to the letter of the Regional Director dated 1st April, 2004, issued by National Council for Teacher Education which envisage that the authority must have fixed deposit receipt in original for Rs.5.00 lakhs towards Endowment Fund and, therefore, the basis of that petitioner must have Rs.6.00 lakhs is factually not right and unjustified and unwarranted. Even if it is assumed that the condition of Rs.6.00 lakhs is to be considered, it may be noted that the petitioner had shown to the institute that fact and shown at the time of hearing that petitioner has a balance of Rs.6.25 lakhs which the learned advocate for the petitioner has shown me in this behalf. In view of the same that reasoning of the authority is absolutely unjustified and unwarranted and there is total non application of mind by the authority.

10. The authorities are served, however, Mr.Dipen Desai, learned AGP has submitted that the authorities have not given instructions in this behalf.

11. In view of the same, the general observations made by the authority that if the authority satisfied the reasonings then Government gives the authority and the institute has not been able to satisfy the condition. It has also been stated that the sole affidavit verified the contents of showing the requirements. In view of the same the findings of the authority that the institute has not been able to fulfill the condition is also not correct.

12. The order of authority dated 31.3.2004 is quashed and set aside. In view of the same, the petition is allowed. The authority is directed to issue NOC within 10 days from the date of receipt of the order. Rule made absolute with no order as to costs. D.S. is permitted.

(K.M. Mehta, J.)

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